IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8798 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI @ GOMO SHOBHRAJBHAISINDHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The order of detention dated 5/6/2000 passed by the Commissioner of Police, Rajkot City in exercise of powers conferred on him by sub-section (2) of section 3 of the Gujarat Prevention of Anti-Social Activities, Act,

1985 ('the Act' for short) against the detenu is subject matter of challenge in the present petition which is filed under Article 226 of the Constitution of India.

2. The order of detention was executed on June 5, 2000. The grounds of detention were communicated to the detenu immediately as required by section 9 of the Act. The detaining authority had thereafter submitted his report to the State Government as contemplated by section 3 (3) of the Act. On receipt of the report from the detaining authority, the State Government had approved the order of detention within 12 days from the date of making of it. The State Government had thereafter referred the case of the detenu to the Advisory Board together with grounds of detention and other relevant materials. The Advisory Board has considered the materials placed before it and reported in its opinion that there was sufficient cause for detention of the detenu. On receipt of the report from the Advisory Board, order of detention was confirmed by the State Government and the State Government has continued the detention of the detenu.

3. From the grounds of detention it is apparent that the detaining authority has taken into consideration six cases registered against the detenu under the provisions of the Bombay Prohibition Act, 1949 with Rajkot city Praduman Nagar Police Station in order to form subjective satisfaction that the petitioner is a bootlegger within the meaning of section 2 (b) of the Act. On the basis of those offences the detaining authority was subjectively satisfied that activities of the detenu as bootlegger disturbed maintenance of public order because it was likely to affect the public health. Therefore with a view to preventing him from acting in any manner prejudicial to maintenance of public order, the detention order was passed against the detenu.

4. Though several grounds have been urged by the learned counsel for the petitioner for challenging the detention order, it is not necessary to refer to all of them, except one which in my opinion merits acceptance.

5. The learned counsel for the petitioner submitted that there is delay on the part of State Government in considering the representation dated 10/7/2000 made by the detenu and, therefore, continued detention of the detenu should be held to be illegal.

6. Though the respondents are duly served, no affidavit in reply has been filed by any of them

controverting the averments made in the petition. From the record of the case it is evident that the detenu had made representation dated July 10, 2000 to the detaining authority, who in turn had forwarded the same to the State Government, which was received by the State Government on July 13, 2000 and disposed of by the State Government on July 24, 2000. It is well settled that the representation made by the detenu must be disposed of as early as possible and without any avoidable delay. The delay of 11 days between the date of receipt of representation and date of disposal is not explained by any of the respondents. Therefore, there is no manner of doubt that right of the detenu to make effective representation which is guaranteed under Artricle 22 (5) of the Constitution is infringed vitiating his continued detention.

7. For the foregoing reasons, the petition succeeds. The order of detention dated June 5, 2000 passed by the Commissioner of Police, Rajkot City, which is produced at Annexure-A to the petition is quashed and set aside. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs. DSP.

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PVR.